

BANAGAN LUMIGUIS, RAMON SUBANO, SEDINAN SUBANO AND KAMBA LUMIGUIS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 20338. April 27, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal by certiorari to review the decision of the Court of Appeals in its CA - G. R. No. 01599-CR.

The facts of the case as found by the Court of Appeals are as follows:

"In the afternoon of Sunday, April 12, 1959, on the beach of Diculum, Zamboanga del Norte, Godo Idlay engaged appellant Kamba Lumiguis in a fistic fight. They were surrounded by appellant Banagan Lumiguis, brother of appellant Kamba Lumiguis, Dungo-an Abao, uncle of Kamba Lumiguis, Sedinan Subano and Ramon Subano, relatives of Kamba Lumiguis. In the course of the fight, Godo Idlay who was the better boxer was able to knock down Kamba Lumiguis. As Kamba fell, Dungo-an Abao struck Godo Idlay on the back of his head with a piece of wood about 3 feet long causing him to fall to the ground, face downward. In such a position, appellant Kamba stood up and taking a piece of wood about 3 feet long, the size of his wrist struck Godo Idlay on the right fore-head. Then he was followed by appellants Banagan, Ramon and Sedinan who alternately hit Godo Idlay on his back. Banagan used a piece of bamboo 2 1/2 feet long and about the size of his wrist and Ramon and Sedinan used a piece of wood about 3 1/2 feet long the size of their arm. At this juncture, Bay-Abbu arrived at the scene and immediately appellant Banagan Lumiguis struck him on the forehead with a piece of bamboo causing him to fall to the ground. Then, Codalis Idlay, brother of Godo Idlay arrived and he was also struck by appellant Banagan Lumiguis. The blow, however, was parried by Codalis Idlay and when he tried to grab the piece of bamboo from Banagan Lumiguis, the latter and his four companions (co-appellants) ran away. It was then that Laydan Alimbac who was a spectator approached and helped Codalis Idlay lift Godo Idlay from the ground and brought him to the house of Abdul Hosen Chiong in a very serious condition. Abdul Hosen Chiong, who was a barrio lieutenant, inquired from Godo Idlay what happened and Godo answered that he had a fistic fight with appellant Kamba Lumiguis and the latter's co-appellants, namely, Banagan Lumiguis, Dungo-an Abao, Sedinan Subano and Ramon Subano struck him. Abdul asked the cause of the fight and Godo related that he fought Kamba when the latter got mad because he tried to collect the amount of P12 as his indebtedness. Abdul tried to give Godo some porridge but he was not able to take it as he vomitted blood. Concerned, Abdul tried to bring Godo to the town proper of Siocon for medical treatment but Godo said that he could not endure the trip and that he will die. In fact Godo Idlay died at dawn of April 13, 1959.

"It appears that before Godo Idlay's cadaver was buried, his body was examined for wounds in the house of Abdul Hosen Chiong by Provincial Sanitary Inspector David Z. Alpuerto. Examination of the body disclosed that Godo Idlay suffered contusion at the right forehead; that the skull behind the right ear was fractured; that there was contused wound therein; that the neck was bruised and that the body was also bruised (Exh. A). Alpuerto affirmed at the trial that a skull bone 7 inches long and 2 1/2 inches wide protruded from the fractured skull; that the contused wound in the fractured skull behind the right ear was 1 1/2 inches deep; that there were

bruises in the neck, on the breast and at the back of the body."

Upon the foregoing facts, the Court of Appeals rendered a decision the dispositive part of which is as follows:

"ACCORDINGLY, the judgment a quo is affirmed insofar as it concerns Dungo-an Abao, and otherwise modified as follows: (1) each of the four ap-pellants, Banagan Lumiguis, Kamba Lu-miguis, Sedinan Subano and Ramon Su-bano, is hereby sentenced to suffer an indeterminate imprisonment of 3 years of prision correccional to 11 years of prision mayor; and (2) all of the five appellants are hereby sentenced, jointly and severally, to indemnify the heirs of the deceased Godo Idlay in the sum of P6,000.00. The remainder of the judgment a quo is affirmed. Costs against all the five appellants."

Banagan Lumiguis, Kamba Lumiguis, Sedinan Subano and Ramon Subano appealed to this Court. However, Sedinan Subano withdrew his appeal, which withdrawal was approved by resolution of this Court dated October 29, 1965. Dungo-an Abao did not appeal.

Petitioners aver that the Court of Appeals erred (1) in convicting the petitioners as accomplices in the crime of homicide, alleging that Banagan Lumiguis and Ramon Subano should be convicted at most for physical injuries only and Kamba Lumiguis should be acquitted; (2) in considering the aggravating circumstance of abuse of superior strength and in not considering the miti-gating circumstance of lack of instruction and/or igno-rance in favor of the five accused-appellants, on the assumption that the four-co-accused of Abao were guilty as accomplices; and (3) in sentencing all the five accused-appellants, jointly and severally, to indemnify the heirs of the deceased in the sum of P6,000.00.

Petitioners contend that Banagan Lumiguis and Ramon Subano should at most be convicted of physical in-juries and not as accomplices in the crime of homicide, al-leging that the mortal blow was delivered by Dungo-an Abao, the ones delivered by Banagan Lumiguis and Ramon Subano having merely caused bruises on different parts of the body of the deceased. They also contend that Kamba Lumiguis should be acquitted because the injuries sustained by him on ac-count of his quarrel with the deceased, as shown by the medical certificate (Exh. 10), more than compensated for the blow delivered by him against the deceased.

The contentions are devoid of merit. It is an established fact that after Dungo-an Abao had delivered the mortal blow, the petitioners followed attacking the deceased with clubs. It has been held that infliction of wounds by a co-accused after the principal accused has delivered the fatal blow shows actual participation in the criminal design and such co-accused is guilty in the character of accomplice (*People vs. Tumayao*, 56 Phil. 587; *People vs. Azcona*, 59 Phil. 580). In *People vs. Cortes, et al.*, 55 Phil. 143, we ruled: "Where the three accused attacked a third person, one of them inflicting, with a club, a fatal blow on the forehead of the victim, while the other two, immediately thereafter, inflicted minor injuries with blows from similar weapons, a conviction of the first assailant in the character of principal in homicide, and of the two companions in the character of accomplices, is proper."

Petitioners claim that the trial court erred in considering the aggravating circumstance of abuse of superior strength and in not considering the mitigating circumstance of lack of instruction and/or ignorance, on the assumption that the petitioners are guilty as accomplices.

The claim is tenable insofar as the aggravating circumstance of abuse of superior strength is concerned. We have ruled: "The estimation of this cir-cumstance is essentially inconsistent with the finding that only one of three accused is guilty in the character of principal, while the other two participated in the character of accomplices only. Where the abuse of superior strength is to be estimated as an aggravating circumstance from the mere fact that more than one person participated in the offense, it must appear that the accused cooperated together in some way designed to weaken the defense; and if, in the case before us, the two accomplices really par-ticipated in the

sense necessary to enable the court to estimate against them the aggravating circumstance mentioned, this would make them guilty in the character of principals. But the court having found that only one of the three was a principal and the other two did not cooperate in the way necessary to make them principals, it is evident that the single principal cannot be said to have taken advantage of superior strength; nor can said aggravating circumstance be estimated against the accomplices" (People vs. Cortes, supra).

With respect to the mitigating circumstance of lack of instruction and/or ignorance, petitioners invoke Section 106 of the Administrative Code of the Department of Mindanao and Sulu, which we quote:

"Sec. 106. Sentences upon Moros and non-Christians. - In pronouncing sentence upon a Moro or other non-Christian inhabitants of the Department convicted of crime or misdemeanor, the judge or justice may ignore any minimum penalty provided by law for the offense; and may impose such penalty not in excess of the highest penalty provided by law, as, in his opinion, after taking into consideration all the circumstances of the case, including the state of enlightenment of the accused and the degree of moral turpitude which attaches to the offense among his own people, will best sub served the interest of justice. The judge or justice may also, in his discretion at any time before the expiration of the period allowed for appeal, suspend the execution of any penalty or part thereof so imposed, subject to such condition as he may prescribe."

In the imposition of penalty on a non-Christian inhabitant, it is within the discretion of the trial court to apply the special provision above-quoted (People vs. Pawin, 85 Phil. 528; People vs. Salazar, 56 O. G. 6334). Such discretion should not be disturbed on appeal in the absence of abuse thereof, and we are of the opinion that no such abuse was committed here.

Lastly petitioners claim that the civil liability for which they are bound to answer should be based on the extent of their actual participation.

The claim is tenable. Article 110 of the Revised Penal Code provides that "notwithstanding the provisions of the preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable." It has been held that the sole principal in the commission of the offense of homicide or murder is primarily liable for his own part of the indemnity and subsidiarily liable for the portion adjudged against his accomplices, in case of their insolvency; while the several accomplices are jointly and severally liable for the portion adjudged against them and subsidiarily liable for the portion of their principal, in case of his insolvency (People vs. Bantagan, 54 Phil. 834; People vs. Cortes, 55 Phil. 143).

With respect to the penalty to be imposed upon the petitioners, Article 52 of the Revised Penal Code provides that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices, which in this case is prision mayor. Considering the non-attendance of any mitigating or aggravating circumstance, and applying the Indeterminate Sentence Law, the minimum range of the indeterminate penalty imposable upon each of the three petitioners is from 6 months and 1 day to 6 years, and the maximum range thereof is from 8 years and 1 day to 10 years.

In view of the foregoing considerations, the judgment appealed from is modified with respect to the penalty, by reducing the maximum imposed by the Court of Appeals from eleven (11) years to ten (10) years of prision mayor; and with respect to the civil liability, by apportioning the indemnity of P6,000.00 awarded by the Court of Appeals as follows: the principal, Dungo-an Abao, shall be liable primarily for P3,000.00; and the four petitioners herein, including Sedinan Subano, shall be liable primarily and in solidum among themselves for P3,000.00. The subsidiary liability of all of them shall be enforced in accordance with the provisions of Article 110 of the Revised Penal Code. No pronouncement of costs in this instance.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., took no part.

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